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FILED
02/21/2023
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CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0633-R-2022
Lambert, Kathryn
7.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Mark T. Brakstad; Susan S. Brakstad

CASE 43B-0633-R-2022
43B 206846-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following issue remark:

THE CLAIMED POINT OF DIVERSION IS IN QUESTION. THE LOCATION OF THE DIKE CANNOT BE IDENTIFIED FROM AVAILABLE DATA.

The issue remark was not addressed through the objection process. The Water Court is

required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. On November 14, 2022 Claimants Filing Of Documentation To Resolve Issue Remark was filed. The settlement is viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree states that the point of diversion is in the SENENE section 4, T2S, R15E, SWEET GRASS. The point of diversion should be the SWNENE section 4, T2S, R15E, SWEET GRASS. The point of diversion issue remark should be removed as addressed and resolved.

2. The Preliminary Decree abstract of this claim also includes the following notice remark:

ALTHOUGH NOT OBJECTED TO, THE PLACE OF USE WAS CHANGED TO REFLECT THE
REDUCTION IN MAXIMUM ACRES IRRIGATED.

This remark provides notice of action taken during the Temporary Preliminary Decree proceedings and does not raise an unresolved issue which needs to be addressed. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information provided by the claimant is sufficient to resolve the issue remark

without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 206846-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners: MARK T BRAKSTAD
9128 189TH PL SW
EDMONDS, WA 98026 5922

SUSAN S BRAKSTAD
9128 189TH PL SW
EDMONDS, WA 98026 5932

Priority Date: APRIL 30, 1920

Type of Historical Right: USE

Purpose (use): IRRIGATION

Irrigation Type: FLOOD

***Flow Rate:** 8.50 GPM

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 3 - MODERATE

***Maximum Acres:** 0.50

Source Name: LOWER DEER CREEK

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		SWNE	4	2S	15E	SWEET GRASS

Period of Diversion: APRIL 15 TO OCTOBER 15

Diversion Means: DIKE

Period of Use: APRIL 15 TO OCTOBER 15

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	0.50		NENE	4	2S	15E	SWEET GRASS

Total: 0.50